is to notify the Road Transport Officer, who must then formally make the seizure. It is clear from the record that this was in fact done.

I would like to make it clear however that to make quite sure that the procedure laid down relating to forfeiture has been complied with, the evidence for the prosecution should include a statement by a police officer or other proper witness that the vehicle was seized by a Road Transport Officer. It should not be left to the Court to have to hunt through the record to see that the lawful procedure has been followed.

The car was subsequently produced at the hearing and I think therefore that there is sufficient evidence that the car had in fact been seized by a Road Transport Officer when it was handed over to them pursuant to the request of the Police on the 5th July.

Mr. Singam also argued that the *obiter dictum* of Ong J. in *Gun Kim Luu* v. *Public Prosecutor* [2] was in error and that following the unreported judgment of Neal J. above referred to forfeiture was not mandatory under section 92(4). With that proposition I also respectfully agree but as Ong J. has pointed out this is a most serious offence and its consequences may be disastrous to anybody injured by a vehicle being so used, and in default of very special circumstances Magistrates may well decide after having considered the matter judicially that a proper order under section 92(4) in these cases would be one of forfeiture.

Because these cases are so serious and because they are so difficult to detect they should be thoroughly investigated and carefully prosecuted. In *Gun Kim Luu's* case the police had kept watch on the vehicle over a period of time and had gathered evidence which was admissible under section 15 of the Evidence Ordinance which showed quite conclusively that the defendant had been plying for hire and I think it very desirable that evidence of this nature should be produced in all cases of this nature. Such evidence is always available since the police, I am quite certain, would never stop a private vehicle at random merely because it had more than one person in it and in my opinion evidence of previous instances should be given. It was in fact available in this case because when I came to consider the propriety of the Magistrate's order of confiscation I called Sulong bin Ngah, P.C. 11234 who had received instructions to keep an eye on the vehicle over the last month or so and that it was as a result of 2 months of observation that led him to stop the vehicle on the 5th of June. I considered therefore that the defendant in this case was a habitual offender and therefore I confirmed the order of forfeiture.

On the second charge Mr. Singam argued that section 144 of the Road Traffic Ordinance, 1958 did not apply to an offence under section 22 and that as the prosecution had produced no licence the defence should not have been called on this charge. But the onus of proving that a vehicle is properly licensed lies on the person who alleges it. (See section 106 of the Evidence Ordinance and my judgment in Muar Criminal Appeal 28 of 1961 following the judgments in *Public Prosecutor* v. *Chin Yoke* [3] and *Khoo Teck Yam* v. *Public Prosecutor* [4]). In any event the car was produced before the Court and the learned Magistrate could use his own eyes to see whether it was properly licensed or not.

The same consideration arises in respect of the third charge.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.*

JABOL v. MURUAN & ANOR.

[O.C.J. (Adams J.) December 2, 1961]

[Muar — Civil Suit No. 2 of 1961]

Land Laws — Joint ownership of land — Sale during Japanese occupation — Conveyance unregistered — Rectification of Register under s.42 of Johore Land Enactment — Whether claim of purchaser could be enforced against rectified register.

The plaintiff in 1943 bought the whole of the interests of two joint owners in a piece of land. A transfer was executed but it was not registered. The plaintiff entered into possession of the land. After the war, one of the two joint transferors applied under section 42 of the Johore Land Enactment for the register to be rectified to show her and her son as joint owners of the property. Following a sketchy enquiry by the Collector, the register was so rectified. The other joint transferor could not be traced. Meanwhile, plaintiff had sold a half-share in the property to a Chinese who was not a party to these proceedings. The plaintiff now sought a declaration that he was entitled absolutely to an undivided half-share in the property.

Held: there was evidence of an out and out sale of the property to the plaintiff. The enquiry held by the Collector had not delved into several matters of importance and it could not support the rectification of the register as against the claim of the plaintiff, and consequently plaintiff was entitled to the declaration he sought.

ACTION.

K. N. Stoner for the plaintiff.

Defendants in person.

Cur. Adv. Vult.

Adams J.: This is an action in which the plaintiff seeks a declaration that he is entitled absolutely to an undivided half share in land held under S.S. No. 742/17 situate in Mukim Sri Gading VIII in the District of Batu Pahat and held under A.O. No. 3559, various other declarations which are necessary and the usual prayer for further and other relief.

The evidence of Inche Isnain bin Haji Ma'arof, the Asst. Collector of Land Revenue, Batu Pahat, shows that this piece of land is in extent about 5 acres and it is not disputed that on the 11th June, 1936, the land stood in the joint names of Siti Hadijah bte. Talib and Masuan or Masuran bin Talib. He said the first name was difficult to read but it is clearly shown in 1954 when the transfer of one of the undivided shares was made to Tor Cheng Teng that the remaining owner was Masuan bin Talib. There had been no dealings with the land in the

meantime and therefore it follows that the original co-owners in 1936 were Siti Hadijah bte. Talib and Masuan bin Talib.

The plaintiff deposed that he bought the whole of the joint owners' interests in the said land in 1943 for the sum of $3,000 (Japanese dollars) per acre. The transfer was not registered owing to the difficulty of registration during the Japanese occupation but Naib Mohd. bin Haji Nawawi, the Asst. Penghulu of Mukim VIII, attended at the lawyer's office with the plaintiff, Siti Hadijah bte. Talib and Masuan bin Talib and witnessed the execution of the transfer. The Naib gave reasons as to why Masuan bin Talib was selling. He said that he told the Naib that he wanted to go back to Indonesia and in fact the Naib had not seen him since although the plaintiff deposed that his brother was in touch with him in Indonesia.

After the reoccupation the plaintiff got Siti Hadijah to execute a transfer of her undivided half share in the said land the subject of the transfer for value in 1943 and this he subsequently sold to a Chinese Tor Cheng Teng in 1954. The plaintiff was unable to do anything about Masuan bin Talib's undivided share as he was apparently trying to get hold of him in Indonesia. It was not disputed the plaintiff had been in occupation of this piece of land since 1943. At some time or other Siti Hadijah apparently made an application to the Collector under section 42 of the Johore Land Enactment seeking to have the title rectified. I trust I may be forgiven if I describe the subsequent enquiry held by the Collector as extremely sketchy. There is no date, it does not appear what land is referred to, and even the certified true copy is not dated as to its authentication. I set out the evidence:

"Siti Hadijah S.S.

My husband Hassan died about 8 years ago at Betong 15th Mile and I have lost the death certificate. The land is near 15th Mile of Kluang planted with mature rubber perhaps worth $1,200. There is no encumbrance and no shop debts. I paid belanja mati $300, which I borrowed from my father; I have paid this back. The only heirs are myself and his son Murwan who is still at school. I wish to be registered jointly with Murwan.

Naib Jambol S.S.

I know of the death of this man and shared in kenduri, etc. The heirs are as stated.

Order (Siti Hadijah bte. Talib
Order (Murwan b. Hassan.
to be registered."

On that evidence apparently Murwan bin Hassan was registered as joint owner of the land with his mother. This enquiry does not account for or attempt to deal with the fact that the piece of land about which the suit is concerned belonged to Siti Hadijah and her brother Masuan bin Talib. That such a person as Masuan bin Talib existed was deposed to by both the plaintiff and Naib Mohd. bin Haji Nawawi. Although his existence was denied by both the defendants they called no evidence in support of their contention.

I do not believe either of the two defendants in respect to non-existence of Masuan bin Talib or their denial that Siti Hadijah had such a brother and I am quite satisfied that there was such a person. It is most unlikely that a mistake should arise in both the first name and the father's name in a document so important to a Malay as a title to land. I would have been more inclined to believe the first defendant had the original name been Masuran bin Hassan but I do not believe that there is likelihood of a double error nor is there any reason to disbelieve Naib Mohd. bin Haji Nawawi. That there was an out and out sale of this property to the plaintiff would appear to be borne out by the fact that he has enjoyed uninterrupted peaceful possession of the property for the last 18 years. In my view the evidence of the plaintiff and Naib Mohd. are true and the plaintiff is the undoubted owner of an undivided share of the said land with Tor Cheng Teng.

The plaintiff is therefore entitled to a declaration in the terms of the amended statement of claim except that the allegation of fraud in para. 3 must be struck out. The Registrar of Titles must correct his register accordingly.

The defendants must pay the costs.

Order accordingly.

Solicitors: *Pillai & Co.*

ONG YAP CHANG v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) December 3, 1961]

[Muar — Criminal Appeal No. 69 of 1961]

Gaming — Tikam Ekor Lottery — Assisting in management of — Common Gaming Houses Ordinance, 1953, s.4(1)(c) — Expert evidence on exhibits — No reasons for opinion — Whether Magistrate's finding of fact justified — Observation on confiscation of money found on accused.

The accused was stopped while riding his bicycle in Muar Town and certain pieces of paper dropped from his possession. He was charged under section 4(1)(c) of the Common Gaming Houses Ordinance for assisting in the management of the Tikam Ekor Lottery. A police expert on the Tikam Ekor Lottery deposed *inter alia* that the pieces of paper which the accused had dropped were staking slips in a 10,000 character lottery without giving reasons for arriving at those conclusions.

Held: as the expert had given no reasons for his conclusions, the learned Magistrate was in no position to judge whether the evidence of the expert was in fact acceptable. There was therefore no evidence on which he came to his finding that the exhibits were in fact a record of stakes. Appeal must therefore be allowed. *Choo See Kean* v. *Public Prosecutor* (1) explained and followed.

Cases referred to:—

(1) *Choo See Kean* v. *Public Prosecutor* [1959] M.L.J. 213.

(2) *Sim Ah Oh* v. *Public Prosecutor* [1962] M.L.J. 42.

CRIMINAL APPEAL.

W. H. Sault for the appellant.

Hamzah bin Dato Abu Samah (Deputy Public Prosecutor) for the respondent.